

Fair Political Practices Commission

To: Chairman Johnson; Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: February 29, 2008

1. *California ProLife Council, Inc. v. Karen Getman, et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In 2000 the Federal District Court for the Eastern District of California dismissed certain counts and granted the FPPC's motion for summary judgment on the remaining claims. The Ninth Circuit Court of Appeal agreed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy if it can show a sufficient state interest for its rules. The Ninth Circuit remanded the matter to the district court to determine whether California could establish an interest sufficient to support its disclosure rules, and that those rules are properly tailored to that interest. On February 22, 2005, the district court granted defendants' motion for summary judgment on those questions. Plaintiff again appealed. The Ninth Circuit heard oral argument on February 12, 2007. On November 14, 2007 the court released its opinion under the name *California ProLife Council, Inc. v. Randolph*, finding that California had established its compelling interest in disclosure of the sources of funds used to make independent expenditures supporting or opposing ballot measures. The court did find, however, that when the entity making such expenditures was a multi-purpose non-profit group organized as a Section 501(c)(4) corporation, which did not make expenditures or contributions towards the election or defeat of candidates, the Commission failed to demonstrate how the ancillary rules involving registration as a recipient committee were sufficiently tailored to support California's compelling interest in disclosure. The Ninth Circuit remanded the case to the trial court without further instructions. The parties have submitted a Joint Status Conference Report and proposed judgments. The court vacated the Status Conference and requested briefing from the parties to assist the court in evaluating the parties' proposals, which differ sharply.

2. *FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria*

The FPPC alleged that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving over \$500,000 in political contributions to statewide candidates and ballot measures, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. This civil lawsuit was originally filed in Sacramento County Superior Court on July 31,

2002. On January 17, 2003, defendants moved to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray entered an order in favor of defendants. The FPPC appealed to the Third District Court of Appeal. That court heard oral argument on October 19, 2004, and on October 27 decided in favor of the FPPC, overturning the trial court's grant of defendant's motion to quash. The tribe filed a petition for review with the California Supreme Court, which was granted on January 12, 2005. Further action on this case was deferred pending the outcome of the Agua Caliente case, which was decided in favor of the FPPC, and became final on July 28, 2007. The Santa Rosa appeal was then dismissed by the Supreme Court and sent back down to the Third District Court of Appeal on September 12, 2007.

On September 26, 2007, the appellate court returned the matter to Sacramento Superior Court for further proceedings.